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Rulemaking Hearing Rule(s) Filing Form

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Agency/Board/Commission:	Department of Human Services
Division:	Administrative Services
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Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1240-09-01	Access to Public Records of the Department of Human Services
Rule Number	Rule Title
1240-09-01-.02	Definitions
1240-09-01-.03	Requests for Access to Records
1240-09-01-.04	Requests for Reproduction of Records
1240-09-01-.05	Fees and Costs for Reproduction of Records
1240-09-01-.06	Payment for Records

Chapter Number	Chapter Title
Rule Number	Rule Title

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Chapter 1240-09-01
Access to Public Records of the Department of Human Services

Amendments

Rule 1240-09-01-.02, Definitions, is amended by deleting paragraph (3) in its entirety and by substituting the following language so that, as amended, paragraph (3) shall read as follows:

- (3) "Non-routine Copy" is a copy, whether of paper or of electronically stored data, which requires more than minimal staff assistance, i.e., odd or oversize pages, bound documents, or manipulation of electronically stored data. Any records, even if stored electronically or magnetically, shall be deemed to be non-routine copies if it is necessary for Department personnel or contractors to print the copies of the record by means of a separate screen-print for each individual page of the record.

Rule 1240-09-01-.02, Definitions, is amended by deleting subparagraph (a) of paragraph (4) in its entirety, and by substituting the following language, so that, as amended, paragraph (4), subparagraph (a) shall read as follows:

- (a) "Public Record" means any record of the Department that is deemed to be open to inspection of the public pursuant to the provisions of the defined in T.C.A. § 10-7-503(a)(1): The terms "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

Rule 1240-09-01-.02, Definitions, is amended by deleting part 1 of subparagraph (b) of paragraph (4) in its entirety, and by substituting the following language, so that, as amended, paragraph (4), subparagraph (b), part 1 shall read as follows:

- 1. protected as confidential or privileged pursuant to any state or federal law, regulation, court order or court rule; or

Rule 1240-09-01-.02, Definitions, is amended by inserting a new paragraph (3) and re-numbering existing paragraphs (3), (4), and (5) accordingly; by deleting existing paragraph (6) and by adding new paragraphs (7), (8), (9), (10) and (11), so that, as amended, paragraphs (3), (7), (8), (9), (10) and (11) shall read as follows:

- (3) "Labor" means the time reasonably necessary for the Department's staff to produce the requested records and includes the time spent locating, reviewing, including the time required to assess the costs necessary for reproduction, redacting and reproducing the records.
- (7) "Records custodian" means the office, official or employee lawfully responsible for the direct custody and care of a public record maintained by the Department of Human Services and is not necessarily the original preparer or producer of the record. The Department of Human Services may have more than one designated records custodian.
- (8) "Redacted record" means a public record otherwise open for public inspection from which protected information has been removed or obscured prior to release or inspection.

- (9) "Requestor" means a Tennessee citizen requesting access to or a copy of a public record.
- (10) "Routine Copy" means a paper copy of a record which, to be made, requires minimal staff assistance, i.e., pages which are either 8½ x 11 or 8½ x 14 and can be automatically printed from electronically stored records or automatically fed into a standard copier.
- (11) "Safe Harbor" means a presumption of reasonableness of the costs for records reproduction for a public records custodian who adheres to the policies and guidelines established by the Office of Open Records Counsel (OORC). Under this presumption, any fee related to the production of a copy or duplication that is charged by an entity required to provide access to public records pursuant to the Tennessee Public Records Act is presumed to be reasonable if the entity adopts and implements either the OORC Schedule of Reasonable Charges or adopts charges pursuant to a separate schedule developed in accordance with the provisions of the OORC Schedule of Reasonable Charges. The aggregation of frequent and multiple requests for copies of public records and the labor fees charged as the result of that aggregation are presumed to be reasonable if the entity adopts and implements the OORC Frequent and Multiple Request Policy or a separate policy developed in accordance with the provisions of the OORC Frequent and Multiple Request Policy.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

Rule 1240-09-01-.03, Requests for Access to Records, is amended by deleting paragraph (1) in its entirety, and by substituting the following language, so that, as amended, paragraph (1) shall read as follows:

- (1) Processing of Requests to View Public Records.
 - (a) An in-person request for access to public records of the Department shall be made during the regular business hours of the Department from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
 - (b) All requests for access to public records of the Department made in-person, or by any other means, shall be directed to the Records Custodian, State Office of the Department of Human Services, 400 Deaderick Street, 15th floor, Nashville, Tennessee 37243.
 - (c) All requests for access to the Department's public records shall identify with reasonable specificity the record, set or system of records which is requested.
 - (d) Requests will be processed on a first-come, first-served basis; provided, that the Commissioner, or the Commissioner's designee, may at any time alter this provision when circumstances warrant.

Rule 1240-09-01-.03, Requests for Access to Records, is amended by deleting paragraph (2) in its entirety, by renumbering existing paragraph (3) as paragraph (2), by deleting subparagraph (a) of new paragraph (2) in its entirety and by substituting the following language, so that, as amended, subparagraph (a) of new paragraph (2) shall read as follows:

- (a) Review, Assessment and Redaction of Records.
 - 1. Before providing access to the requested record, the Department's staff shall review as quickly as reasonably possible the requested records that have been located consistent with the availability of appropriate staff and

with regard to the scope of the records request, and make an assessment of the status of the records, the scope of the requested access and the time required for a response.

2. Upon review, the Department's staff will redact any data or information prior to release of the record, or portion of the record, that it determines has, or may have, confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.

Rule 1240-09-01-.03, Requests for Access to Records, is amended by moving the following existing language that immediately follows part 6 of subparagraph (c) of new paragraph (2):

then the Department shall inform the requesting person of the assessment and the reasonable approximate time required in complying with the request and a summary of the basis for the assessment regarding access to the records.

so that it immediately follows the language and punctuation of existing part 6, and by deleting the language "requesting person" in the cited language and by substituting instead the word "requestor", so that, as amended, part 6 shall read as follows:

6. For any reason, then the Department shall inform the requestor of the assessment and the approximate time required to comply with the request and provide a summary of the basis for the assessment regarding access to the records.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

Rule 1240-09-01-.04, Requests for Reproduction of Records, is amended by deleting paragraph (1) in its entirety and by substituting the following language, so that, as amended, paragraph (1) shall read as follows:

(1) Processing of Requests for Copies of Public Records.

- (a) An in-person request for copies of public records of the Department shall be made during the regular business hours of the Department from 8:00 AM to 4:30 PM, Monday through Friday, except for holidays.
- (b) All requests for copies of public records of the Department made in-person, or by any other means, shall be directed to the Records Custodian, State Office of the Department of Human Services, 400 Deaderick Street, 15th floor, Nashville, Tennessee 37243.
- (c) All requests for copies of the Department's public records must be made in writing to the Records Custodian of the Department of Human Services, and shall identify with reasonable specificity the record, set or system of records which is requested.
- (d) Records requests will be processed on a first-come, first-served basis; provided, that the Commissioner, or the Commissioner's designee, may at any time alter this provision when circumstances warrant.

Rule 1240-09-01-.04, Requests for Reproduction of Records, is amended by deleting paragraph (2) in its entirety, by re-numbering existing paragraph (3) as paragraph (2), by deleting parts 1 and 2 of subparagraph (a) of new paragraph (2) in their entireties, and by substituting the following language, so that, as amended, new paragraph (2), subparagraph (a), parts 1 and 2 shall read as follows:

1. Before reproducing copies of the requested record, the Department's staff shall review as quickly as reasonably possible the requested records that have been located consistent with the availability of appropriate staff and with regard to the scope of the records request, and make an assessment of the status and scope of the copy request and the time and costs required to locate, retrieve, review, redact, and reproduce the records.
2. Upon review, the Department's staff will redact any data or information prior to release of the record, or portion of the record, that it determines has, or may have, confidential, privileged or otherwise protected material in the record that is subject to the Tennessee Public Records Act.

Rule 1240-09-01-.04, Requests for Reproduction of Records, is amended by deleting part 6 of subparagraph (c) of new paragraph (2) in its entirety and by substituting the following language, so that, as amended, part 6 of subparagraph (c) of new paragraph (2) shall read as follows:

6. For any reason, then the Department shall inform the requestor of the assessment and the approximate time required to comply with the request, the costs to provide reproduction of the records and provide a summary of the basis for the assessment regarding the costs of reproducing the records.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

Rule 1240-09-01-.05, Fees and Costs for Reproduction of Records, is amended by deleting paragraphs (1), (2), (4), (6), (7) and (10) in their entireties and substituting the following language, so that, as amended, paragraphs (1), (2), (4), (6), (7) and (10) shall read as follows:

- (1) The Records Custodian may assess a charge of fifteen cents (\$0.15) per page for each routine, standard 8½ x 11 or 8½ x 14 black and white copy produced. The Records Custodian may assess a requestor a charge for a duplex copy that is the equivalent of the charge for two (2) separate copies. The Department may charge for all costs for reproduction of the record for the person or entity that has made the records request, whether the record is determined to be "routine" or "non-routine". Copies of sizes other than 8½ x 14 may be charged at fifty cents (\$.50) per page, or, if higher, the actual costs.
- (2) If a public record is maintained in color, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy, and if the equipment is available to the Department to reproduce the copy in color. If the requestor then requests a color copy, a records custodian may assess a charge of fifty cents (\$0.50) per page for each 8½ x 11 or 8½ x 14 color copy produced, or, if higher, the actual costs.
- (4) Copies, exclusive of labor, made on electronic media shall be charged at a minimum of One Dollar (\$1.00) for any CD, DVD, or floppy disk if these media are available.
- (6) The costs of reproduction shall include the following:
 - (a) Department staff labor, paper and other products and rental fees, including, but not limited to, the costs of:

1. Staff labor costs utilized in locating, retrieving, reviewing redacting, and reproducing the record, including labor and other costs utilized in reviewing and assessing the estimated cost to reproduce the record; and
 2. Paper or other products such as, but not limited to, copy toner or toner cartridges, inks, electronic or magnetic media including, but not limited to compact disks, DVDs, floppy disks, etc., or any per copy charges incurred by the Department on any rented equipment.
- (b) Development of Computer Programs and Applications, including, but not limited to:
1. Creation of a new or modified computer program or computer application that is necessary to put the records in a readable and reproducible format or in a specific reproducible format that is requested by the person or entity seeking copies of the record; and
 2. In such case, the costs of staff, contractor, or consultant specialist time required for the production of the program or application and the costs of any new or modified software or hardware necessary for the production of the records may also be charged by the Department as costs of reproduction of the record.
- (c) The costs for delivering the records by mail or any other delivery services or any other mechanisms or processes, electronic, magnetic or otherwise.
- (d) Any other costs associated with actually reproducing the requested records, including all charges by vendors and contractors utilized to access or reproduce the records.
- (e) The records custodian shall utilize the most cost efficient method of producing the requested records.
- (7) Calculation of Department Staff Labor Costs.
- (a) Department staff labor costs shall be charged at either the hourly rate, for the staff person's position as set by the Department of Human Resources, or, if paid on a salary basis based on the annual salary, excluding the first hour of labor and benefits, including the cost of any overtime that is necessary to reproduce the record.
 - (b) The hourly rate is that established by the Department of Human Resources for that staff person's position. If the staff person is paid on a salary basis, the rate paid is that based upon the annual base salary of the employee(s) excluding benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual base salary by the required hours to be worked per year which will be Nineteen Hundred Fifty (1,950) hours for full-time employees. For example, an employee who is expected to work a Thirty-Seven and One-Half (37.5) hour work week and receives Thirty-Nine Thousand Dollars (\$39,000) in salary on an annual basis will be deemed to be paid Twenty Dollars (\$20) per hour.
 - (c) When the aggregate number of requests made by a requestor within a calendar month exceeds four (4), the requestor will be charged a fee for any and all labor that is reasonably necessary to produce the copies of the

requested records after informing the requestor that the aggregation limit has been met.

(10) Copying by Requesting Person or Entity.

- (a) The Commissioner, or the Commissioner's designee, may, in his or her discretion, permit the requestor to supply the necessary equipment and supplies to make the requested copies where the records are housed or located for purposes of the records request, and all, or a portion, of the fees required by this Chapter may, in his or her discretion, be waived by the Department, but no record shall be permitted to be removed from the Department's offices for this purpose without written approval by the Commissioner or the Commissioner's designee.
- (b) The Department may provide any personnel to observe the copying process permitted by this paragraph to protect the integrity of the records, and the costs of staff time necessary for this purpose may be charged pursuant to this Chapter.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

Rule 1240-09-01-.06, Payment for Records, is amended by deleting paragraphs (1), (2) and (3) in their entireties and substituting the following language, so that, as amended, paragraphs (1), (2) and (3) shall read as follows:

- (1) Prior to copies being made, or prior to developing a specific format for the reproduction of records, payment in full must be made to the Department, unless the payment is waived or delayed pursuant to rule 1240-09-01-.07 below.
- (2) Payment for the costs of reproducing records shall be made only by cashier's check, money order, or other reliable means as determined by the Department.
- (3) The cashier's check or money order shall be made payable to the Treasurer, State of Tennessee, and delivered to the Records Custodian.

Authority: T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on 11/05/2009, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/13/09

Rulemaking Hearing(s) Conducted on: (add more dates). 10/06/09; 10/07/09

Date: _____

Signature: _____

Name of Officer: Jeffrey Blackshear

Assistant General Counsel

Title of Officer: Tennessee Department of Human Service

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Date(s), Time(s) and Place(s) of Public Hearing(s): October 6, 2009, 6:30 PM, Conference Room A, 7th Floor, 531 Henley Street, Knoxville, TN 37902; October 6, 2009, 6:30 PM, 2nd Floor Board Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37243; and October 7, 2009, 6:30 PM, 2nd Floor Auditorium, Donnelly J. Hill State Office Building, 170 North Main Street, Memphis, TN.

Public hearings were held on the dates, times and places noted above by the Department of Human Services to receive comments regarding amendments to the above referenced rules. No comments were received.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules do not appear to affect small businesses as defined in the Act. These rules do not regulate or attempt to regulate businesses.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule sets forth the process for obtaining records from the Tennessee Department of Human services (DHS). In general, all records, except those specifically cited as exceptions, may be requested by any citizen of the State. The records covered include documents created and maintained while conducting official business. DHS records may be inspected during regular business hours or copies may be obtained from DHS. The manner and procedure for obtaining records are detailed herein.

These rules incorporate the Schedule of Reasonable Charges that has been issued by the recently created Open Records Counsel. Additionally, rule 1240-09-01-.05, Fees and Costs for Reproduction of Records, has been updated to allow for new electronic technology. Rules 1240-09-01-.03, Requests for Access to Records, and 1240-9-1-.04, Requests for Reproduction of Records, provide more detailed instructions on processing requests. Definitions have been added in rule 1240-09-01-.02 for Labor, Records custodian, Redacted record, Requestor, Routine Copy, and Safe Harbor.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 4-5-202; 8-4-604(a)(3); 10-7-504(a)(7); 10-7-506(a); 71-1-105(4) and (12).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Any Tennessee citizen requesting access to or a copy of a public record. There were no comments received during the rulemaking hearing process. Three (3) public hearings were held across the state. No written comments were received regarding the proposed rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There are no anticipated increases or decreases in state and local government revenues and expenses resulting from the promulgation of this rule.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Jeffrey Blackshear, Assistant General Counsel, Office of General Counsel, Department of Human Services

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jeffrey Blackshear, Assistant General Counsel, Office of General Counsel, Department of Human Services

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A